IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

LA.App..No. 620 of 2002(D)

LAR.175/1999 of III ADDL.SUB COURT, ERNAKULAM
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APPELLANT: CLAIMANT IN THE LAR

PRAKASAN,S/O.KOUSALIA,
KIZHAKKEPALAKKAPPILLI PARAMBIL,KAIPARAMBIL,
PONNURUNNI.

BY ADV. SRI.V.JAYAKUMAR

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA.

2. BPC LTD.,IRUMPANAM.

R2 BY ADV. SRI.A.M.SHAFFIQUE

R1 BY GOVERNMENT PLEADER SRI K.V.MANOJ

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.620 of 2002

Dated: September 19, 2007

JUDGMENT

Harun-Ul-Rashid, J.

This land acquisition appeal was filed by the claimant against the judgment and decree passed in LAR 175/1999 on the file of the Sub Court, Ernakulam. An extent of 2.99 Ares of land comprised in Sy.No.563/2.17.19 of Poonithura village in Kanayannur taluk was acquired for laying pipeline for BPCL. S.4(1) notification was published for the last time on 15.2.1997. The acquired land was included in the second category i.e. dry land, having frontage of interior tar road and awarded land value at the rate of Rs.2,14,100/- per Are. Dissatisfied with the quantum of compensation awarded, the above appeal was preferred by the claimant.

2. In support of the claim for enhanced land value, the claimant examined AWs.1 to 3 as witnesses and produced Exts.A1 to A5 documents. On the side of the respondent RW.1 was examined and Exts.B1 and B2 were marked. The claimant filed a claim statement before the Reference Court contending that the acquired land has commercial importance due to its situation near Vytila junction which is one of the busiest junction in Ernakulam city, that the land has national highway frontage on its west, temple road on its south and the pipeline road of BPCL on its west, that there are many commercial, public and religious institutions such as schools, temple, market, commercial shops, super

market etc. near the acquired land and claimed that the acquired land fetches a minimum land value at the rate of Rs.2 lakhs per cent. The commercial importance of the acquired land was spoken to by AWs.1 to 3. It has come out in evidence that the distance from the acquired land to Vytila junction, a busy commercial centre, where six roads meet is only 300 metres away. The evidence shows that besides the locational importance, various institutions such as commercial and governmental institutions are situated near to this acquired land. Ext.A1 sale deed was produced in support of the claim for enhanced compensation. The extent covered by Ext.A1 is 49 cents and the value per cent is Rs.2,24,500/-. The centage value of Ext.A2 document is Rs.1,78,159/-. Relying on the above two sale deeds, the claimant claimed Rs.2 lakhs per cent as land value. It is also contended by the claimant that considering the locational importance of the acquired land, the land acquisition authority ought to have categorised this land as a separate category, as land with a national highway frontage and public lane road frontage.

3. The land acquisition officer had included this land in category No.II i.e. land having frontage of interior tar road. The first category land included by the land acquisition authority is the properties facing Palarivattom - Vytila road via. Thammanam. According to the claimant, his land is having far superior advantages than the first categor3y lands, which is situated by the side of the Palarivattom - Vytila road via Thammanam

and therefore this property should have been categorized as a separate category and should have awarded land value more than the first category properties.

4. The court below entered the finding that Exts.A1 and A2 lands are not similar and comparable to that of the acquired land and further held that the classification and categorization of the acquired land by the land acquisition authority under the second category is correct. The court below answered the reference by confirming the award passed by the land acquisition authority. No enhancement was given to the claimant towards land value or for value of the structures and improvements.

5. The locational importance of the acquired land cannot be disputed. nor its nearness to the Vytila junction which is one of the busy junctions in Ernakulam city. In between the acquired land and the national highway, there is a service road which was the original road before the formation of the national highway. The fact that the acquired land is facing the temple road on its south, the pipeline road of BPCL on its east and the service road on its west and the national highway touching the service road, shows the importance of the location of the acquired land. Considering the location and the importance of the acquired land, we are of the view that the categorization of this land in the second category is not fair and proper. The rate at which the land value was fixed is at the rate of Rs.2,14,100/- per Are. The contention of the claimant that the property is

more valuable than the first category lands is having substance considering the locational importance of the property. Since no separate categorization was done, we are of the view that the acquired land has to be included in the first category and the amount awarded by the land acquisition authority for the first category shall be taken as the market value of the acquired land. The value of the first category land was fixed at Rs.2,67,600/- per Are by the land acquisition authority by allowing 10% increase in the land value shown in the basic document.

The appeal is allowed, the judgment and decree under appeal are modified. The land value of the acquired land is fixed at Rs.2,67,600/- per Are. The appellant is entitled to all the statutory benefits under the Land Acquisition Act including interest on solatium. There will be no order as to costs.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A. No.620 of 2002

JUDGMENT

19.9.2007